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## FISHER HEARING

(Continued from page thirteen)

self originally as not being at all opposed to the special agreement plan is opposed to the settlement association plan.  
Fisher: How is that position of Mr. Ashford made manifest—in a letter?  
Olson: Yes, a letter.  
Fisher: I do not know, Mr. Ashford, whether you agree with the opinion of the Attorney of the Port of Honolulu, who is at this time, but you remember that he stated his opinion—that while in his judgment the law as it now stands on the statute books authorized the granting of homesteads or the acquiring of homesteads upon conditions that are not those insisted on in the special agreement plan and therefore they ought to be granted, the Governor ought not to refuse it, that it is his view that the special agreement plan would on the whole be in the public interest. I do not know whether you care to express an opinion or not.  
Says Too Much Discretion.  
Ashford: My opinion is entirely against that view, because it involves so wide a discretion on the part of the vide for a 10 year term, he can provide for 10 year term, he can provide for 100 year term, or any term.  
Fisher: Your opinion is that the discretion is too broad?  
Ashford: Altogether.  
Fisher: Suppose the discretion was limited?  
Ashford: I would say that I would think favorably of the plan, provided that there would be no discretion.  
Fisher: You think that while the plan that he is now enforcing is a good plan, that the discretion should not be arbitrarily invested in him to change either one way or another simply because he personally thought that it ought to be changed?  
Ashford: That is my view, and I would say that his plan has very much more liberalized and modernized than it was a few years ago.

land exceeding certain areas shall be made, they shall not be given without the approval of the land board. There is also a provision in regard to sales and exchanges, but there is no provision in the case of licenses, and in this particular case the land board would have no jurisdiction, even if a lease were contemplated, because the area was under forty acres, — that is, leases must have the approval of the land board only when forty acres or more of agricultural or 200 acres or more of pastoral land are involved.  
Fisher: What is the authority under which the governor grants licenses?  
Governor: There is no express authority in the statute. It is simply by general reference in two places. That question arose during Governor Dole's administration and was submitted to the attorney general in Washington and he ruled that license should be issued as distinct from leases and could be made for longer terms than leases — they may be made after an auction sale and otherwise. They differ from leases in several respects.  
Fisher: In what respect would they differ to the advantage of the public? \* \* \* I am not putting any responsibility on you in the matter at present, but what I want to get clear first is what these licenses are — you say they can be made for longer terms than a lease — that is distinctly to the disadvantage of the public, is it not?  
Governor: But it can be to the advantage of the public. For instance, the license to put in an irrigation ditch — the ditch could not be constructed unless you gave a longer period.  
Lease or License.  
Fisher: There isn't any reason on earth why a lease should not be made for a drainage ditch if the statute were amended to provide for a longer period, is there? Now, you call a certain thing a lease, now you call something else a license, now what is the difference between that license and lease?  
Governor: A lease is a transfer of the land for a certain period and upon certain terms — a license differs from a lease largely in that it is a permission to do certain things on the land — it does not give complete control over the land.  
Fisher: Then how would it help a drainage ditch?  
Governor: Well, more particularly an irrigation ditch.  
Fisher: Now, unless they could get a very definite right for that fifty years, how are they better off?  
Governor: Well, I don't know as they are any better off — the public may be.  
Fisher: How is the public any better off?  
Governor: Well, the public can pass and repass over the land.  
Fisher: What I want to get at here is why should a transaction of that kind take the form of a license?  
Governor: We don't want to give a definite area — we have certain rights, for instance, the right to get earth and stones and timber in different places, and maybe a burying right. Of course, you can provide that in a lease.  
Fisher: Well, I can understand the use of a license for such purposes such as you speak of, but I am totally at a loss to know what public policy there is that justifies using a license rather than a lease.  
Governor: I suppose the object might be accomplished under either form, provided the statute were liberal enough.  
Fisher: What is the statute regarding a lease?  
Governor: Fifteen years in the case of agricultural land and 21 years in the case of other lands.  
Fisher: In such case as that you undertook to grant a license — did the opinion of the attorney-general relate to a license of that kind?  
Governor: This was a license for a water ditch to be of fifty years' duration.  
Fisher: That is what the opinion of the attorney general referred to?  
Governor: That was the immediate occasion of the opinion.  
Fisher: Do you submit a license of that kind to the land board?  
Governor: Not necessarily. In the case of the Waialeale water license, we submitted to the land board, but at the special request of —  
Fisher: Of whom?  
Governor: Mr. Kinney — he was the special attorney of the applicants. I told him it was immaterial to me whether it went to the land board or not, but if he wished I would submit it to the land board. There might be a question as to whether it should be under the law, although I did not think so.  
Looking Into Land Board.  
Fisher: You think the land board is a useful agency in the administration of the land laws here?  
Governor: Yes, on the whole.  
Fisher: Then why should not these matters — a license of any kind except as to the kind to cut timber or something of that sort, but a license which gives a definite right to do a certain thing for a period of 50 years — why should not that go to the land board?  
Governor: Of course, that is merely a matter of practice.  
Fisher: It strikes me offhand that it is a very important matter.  
Governor: A great many other land transactions, homestead matters, for instance, do not have to go to the land board — very important matters. It is not the intention that minor matters, leases for small areas, should go before the land board. There is this objection, and that is that this board is made up of six persons who receive no compensation, and they are busy men, frequently away from the city, and it is very difficult to get meetings of this board and at times there is a great deal of delay because we cannot get the members together. And then, too, they do not have the intimate knowledge — they haven't time to acquire facts to the same extent as the executive officers. Of course, the executive officers prepare reports.  
Fisher: Don't all of those arguments lead to the conclusion that the

land board ought to be abolished? I myself think they lead to that conclusion, or they are not of very great importance.  
Governor: Well, not necessarily. The larger transactions, such as the larger leases and exchanges and sales for other than homestead purposes, might very well go before the board.  
Fisher: That is just what I think. What you tell me is this. Here you come to an important matter like an irrigation ditch. You adopt the form of a license instead of a lease, because you can grant a greater period.  
Governor: There would be no particular objection to referring those matters to the land board. As a matter of fact, generally, before making such a license, of course, I consult a good many people and get different views.  
Fisher: I know, but that is a voluntary matter of administration. Here is your land board composed of men of the community and you give them authority to pass upon a lease and you come to a case where you want to give a longer time than a lease, then they do not have a right to pass on that, but they merely pass on it as a matter of convenience or courtesy on the part of the Governor. It seems to be that it is an unfortunate practice.  
Governor: It may be that the law could be changed. I don't know whether the land board would care to have those things brought before it. As a matter of fact, the land commissioner did make it a practice at first of bringing before the land board a great many matters over which they had no jurisdiction. They did pass upon this water license that I spoke of.  
Ashford: Might I ask a question. You mentioned another reason, Governor, or rather another feature of licenses besides a longer term than a lease may run — they may be sold or given without being put up at auction. Did you consider that an advantage to the public?  
Governor: I think generally licenses should be put up at auction, and that has been done in most cases. There are very few exceptions.  
Wants to Know of Auctions.  
Ashford: Can you cite any license that you have put up at auction?  
Governor: Well, take this license to which reference has just been made — that was a license to the Laupahoehoe Sugar Company to construct a flume with the provision that it would be maintained for the benefit of all concerned, homesteaders included, and that was put up at auction.  
Ashford: Any other?  
Governor: The last was for a right of way for an irrigation ditch on Maui. That was put up at auction.  
Ashford: Any others?  
Fisher (to Ashford): Do you know of any license of any kind that has not been put up at auction?  
Ashford: It has come to my ears that after the deal was consummated by which the Makee Sugar Company received a lease of a portion of the Kapaia land, the other portion being reserved for homesteads — it has come to my ears that your commissioner of public lands in addition to the fact that the water rights were reserved almost immediately thereafter, granted a license to the sugar company to use all that water. Now, what are the facts of that matter?  
Facts at Kapaia.  
Governor: I think the commissioner granted a license or lease of what is called the surplus water of Kapaia, sold at auction, and then the commissioner shortly after purported to grant to the purchaser of the license or lease or right to use their water when not required by the government or the occupants of the other land. That was without my knowledge, and as soon as it came to my knowledge, he brought it up to me for approval, and I disapproved of it and told him that we could not allow such a thing at all.  
Ashford: Then it has not gone into effect?  
Governor: No.  
Ashford: Do you know that the Makee Sugar Company are operating under that assumed license or not?  
Governor: Not so far as I know.  
Ashford: With reference to this Waialeale water license you state that you submitted that to the land board. If I am correctly informed, you did that under protest — and in a letter you told the board that it must not be considered.  
Governor: Certainly.  
Ashford: How much money was involved in that deal?  
Governor: The rental was to be \$15,000 a year.  
Ashford: For how long?  
Governor: Thirty years and then reappraisal.  
Ashford: Was it put up at auction?  
Governor: It was advertised but the sale was withdrawn. It will probably be advertised again pretty soon.  
Ashford: How will you advertise again if the license has been granted?  
Governor: It has not been granted. The terms have not been fully agreed upon.  
Ashford: So that the matter as approved by the land board and as approved by you has not fully gone into effect — is that correct?  
Referred to Land Board.  
Governor: Yes. The matter has been referred to the land board recently and the land board has approved of the principal changes proposed. It will be again referred to the land board when those changes are made. It does not have to be referred to the land board — but I am perfectly willing to do so — only I simply wish to avoid any wrong impression in regard to the law.  
Fisher: What attorney general of the United States passed on the question?  
Governor: During President McKinley's administration I think Mr. Knox was attorney general then.  
Fisher: Very well, Governor, you may proceed.  
Governor: We were on the Pahala flume license. A year later, however, during 1911, a written application for a portion of the flume system was made, and it was at that time that I

had my conversation with Mr. Robertson and it was substantially the same as the conversation with Mr. Ogg of a year previous, when there was no written application, and Mr. Robertson can come up here and testify to that if you wish. As a matter of fact, that license was — nothing was ever done in regard to it. The executive did not put it up to the land board and did not grant it himself.  
Next, the Kihei matter: Is there anything on that that you wish — that is where the algeroba trees were —  
Fisher: We covered that.  
Governor: The Hana lands —  
Ashford: We have found out all about this.  
Governor: The Waialeale camp sites —  
Fisher: That is over at Hilo. I think we have covered that very fully, Mr. Ashford.  
Ashford: I think we have covered that.  
Fisher: If there is anything you wish to ask, Governor, on the subject —  
Camp Site Matter.  
Governor: Well, I might call attention to the fact that three complaints were made: first, that we were going to sell the lots at too small a price, namely, the price offered by the plantation — that was not the case. As a matter of fact the land were appraised by three disinterested appraisers who put them high specially because the plantation was involved; then next that it will give this plantation a hold when the lease expires, but it appeared that there were plenty of other sites of the same character, and I want to say right here that the railroad was not involved. The granting of these sites was not to give them any hold on the railroad. The railroad was not involved at all, nor would they give them rights of way over the land.  
Fisher: Of course, the statement was made that the location of these camps did not give the plantation or would not give it any advantage in the future — we have merely that general assertion; we have no evidence to prove it.  
Governor: You might say that the land board at the same time approved the sale of the camp site on the Laupahoehoe Sugar Company, which was a good land, and where there was a longer lease than at Waialeale, and where the plantation had other land nearer than was the case at Waialeale. One of the reasons that they gave for approving the camp site at Laupahoehoe was that the plantation had no other land nearby on which it could erect a camp, whereas they had land and plenty of it nearer than was the case at Waialeale.  
Fisher: Governor, do you personally consider that the plantation would receive no strategic advantage from this camp site?  
Governor: I have no doubt of it that they would not.  
Ashford: The land board, however, took the opposite view.  
Governor: That was on the report of one member, and the matter is not settled as yet.  
It seemed to us that we could not very well require the plantation to put in \$30,000 of improvements on so short a lease, and that the laborers on the plantations are entitled to consideration — a large portion of the population here consists of that class of people and it is highly important that plantation camps should be well situated.  
Ashford: What would be your opinion, your idea, Governor, as to the position of the plantation at the end of the lease?  
Governor's Position.  
Governor: It would be simply this: this plantation would probably continue to operate its mill; it has an advantage over everybody else, it can afford to outbid everybody else — when the lease expires, since the entire land is government land the Government can do as it pleases and the plantation will have to submit to any proposition the government may wish to make. If the mill is continued there, even if the entire land is homesteaded, the mill will probably need most of these camp sites. If the plantation does not need these camp sites, then it will be in a position to sell them.  
Governor: Nothing further need be said on the Kioloku land, covered by Judge Lindsay yesterday.  
Kaalai?  
Fisher: We have covered that fully don't you think, Mr. Ashford?  
Ashford: I think so, just let me look over it. It is my impression that that was fully covered.  
Governor: Remnants of Kaunamano.  
Fisher: That was fully covered.  
Governor: Kekupulani Settlement Association.  
Fisher: That was covered fully.  
Governor: Hakalau-iki?  
Fisher: That was also fully covered.  
Governor: Moaula.  
Ashford: I would like to hear a little more about Moaula.  
Fisher: As I understand the complaint there is that various applications have been made to homestead the land, but it has not been done — on the contrary it is being rented.  
Governor: The Moaula land is comparatively a small tract — there are about 200 acres. It is comparatively poor cane land. The reasons for not opening — no, that is Kaalaki — the Moaula lands cover 700 or 800 acres of land. They are on the Pahala Plantation. It was believed in time that one of those tracts would be sufficient — if that tract had been opened, a great deal of cane would be destroyed and a consequent loss without any gain to homesteaders, so it was decided to open up the Wood Valley lands first and that was done and comparatively few of those lots were taken. I regard the Wood Valley lands as superior to the Moaula lands for homesteading.  
Manager Ogg Sincere.  
Fisher: I think that Mr. Ashford will agree that there was a bona fide attempt on the part of Mr. Ogg to cooperate with the homesteaders and if the homesteaders were given a chance at Wood Valley they would be better off.

Were these applicants on the Moaula lands informed that they could apply at Wood Valley?  
Governor: Why, I think they were — The Land Commissioner replied to their applications and told them that the Moaula lands would not be opened.  
Fisher: Were they told that the Wood Valley lands would be?  
Governor: The Wood Valley was advertised for two months or so.  
Fisher: Don't you think it would be a good idea if the Governor should instruct the Land Commissioner to take a more aggressive manner in cases of this sort.  
Governor: That may be.  
Ashford: Is it not a fact that the applications for the Moaula lands had been on file for years before you opened the Wood Valley tract?  
Governor: The application for the Moaula lands was made in November 1910, first there had been a preliminary application, but the application in the proper form was made in November 1910 and it was during that month that the Land Commissioner and I visited the district and decided to open up the Wood Valley lands and the idea was to have the Wood Valley lands immediately opened, but a surveyor could not be found on account of the surveys in other places, but we tried to employ an additional surveyor to lay out the Wood Valley lands, but were unable to until about four months later, in 1911, early in 1911.  
Fisher: When were the surveys completed?  
Governor: The surveys were completed I think in July 1911. Then there were some changes made. They were not made until the Land Commissioner and I went over in September and then a re-survey was made of the drawing.  
Ashford: I find here that the first application was made in June 1910 informally, and formally in 1910, November 1910 by 31.  
I would like to ask the Governor at this point as to what he considers his obligations when thirty-one applicants apply for land — twenty-five being the number provided by statute — if he considered that he might then make a substitute some miles away.  
Statute Provision.  
Governor: The statute expressly provides — that is, the Organic Act — that the Governor shall upon application, open up lots anywhere in the same district, but not necessarily the particular lands applied for.  
Ashford: And would you constitute the word district to mean the District of Kau?  
Governor: I think so. They were not only in the same district, but on the same plantation.  
Ashford: At what distance?  
Governor: About six miles; one is at one end and the other at the other end of the plantation.  
Ashford: Then when you finally determined to open up Wood Valley instead of Moaula, what means did you take of notifying the Moaula people that there would be lands opened up?  
Fisher: I would like to know that, too.  
Governor: The Land Commissioner wrote them.  
Fisher: Find the files; the date is sufficient.  
Fisher: Well, I think that is sufficient on the Moaula lands, Mr. Ashford. This question of surveys — have you some practical suggestion to make as to the improvement of this surveying business, so that you can get quicker action. I can appreciate, however, that surveying has to be carefully done.  
Difficulties of Survey.  
Governor: Just to illustrate, Mr. Secretary. The other day you went over the Haiku lands. That looked like a very small proposition. It was pretty open country. It was not covered with jungle and there weren't precipices and one thing and another, and the slope was not very steep.  
Fisher: No, but it was broken surface.  
Governor: And it did not appear that there were very many private titles. Now, when the exchange was made, the plantations which owned that land told us that there were three or four kuleanas — that is, little holdings — in the tract: that is all they knew of. We sent our best surveyor up there for such cases, a Hawaiian,

who is specially good at finding out the source of titles and locating kuleanas. He has to find it out from kuleana testimony. It took him five months to survey that 1200 acres, and he found, instead of three or four kuleanas, 34. Here is a map showing all these little holdings scattered around of irregular shapes, and the consequence was that we found that so much area was taken up by these that we had to get the plantation to convey as another strip to make up the difference.  
Fisher: What is your suggestion about the remedy for the delay?  
Governor: I think the difficulties are physical and can not be overcome. There will not be so much delay in the future, because we were swamped with applications just after the amendments to the Organic Act were passed. Now we are catching up — we haven't so many applications now.  
Fisher: How many surveyors do you use?  
Hard to Get Surveyors.  
Governor: When the amendments were put into — were enacted — there were, I think, three or four field parties. Then we added — there were apparently three field parties, then we added eight field parties besides their assistants. And then, in addition to that we employed other surveyors in special cases, for instance, to the Wood Valley case. We sent to the Coast for additional surveyors. Of course, there is an objection to having a surveyor from the Coast as he would take longer time than one from here, because he would have to learn the conditions here, and a survey has to be made extremely careful, on account of all these titles.  
Fisher: You think, however, that now that the rush is over you will be able to take care of these surveys more rapidly?  
Governor: Yes.  
Fisher: Now, what is the next?  
Governor: There is the immigration acts. That is a new matter.  
Fisher: You covered the specific homestead cases in the complaint and in the subsequent data.  
Olson: I don't think the Governor discussed the Paumotu-Wheeler matter.  
Governor: That was brought out in Mr. Goodale's testimony yesterday.  
Fisher: You have looked through the records and found out what were the facts as to the prices paid for those lands — that Mr. Goodale was correct as to the \$30 an acre of the cane tracts and that Mr. Wheeler thereby was in error.  
Governor: What Mr. Olson refers to is another letter to which Mr. Goodale referred, a letter which Mr. Wheeler wrote to you and which Mr. Goodale took and did not return.  
The facts are these: On October 31, two gentlemen called on me and presented this letter, unsigned, stating that Mr. Wheeler had written it out tentatively, but had not decided whether or not to send it to me, and the principal complaint in it was that he had not been paid for a portion of the homestead road which he had constructed under a contract from the Superintendent of Public Works. The next day I wrote to the Superintendent of Public Works for a report on the matter, and the following day I received his report. Two days later I called the Attorney General and the Auditor into conference and the situation was this: The Superintendent of Public Works had let a contract for \$90 for the construction of a small stretch of road, under the impression that there was that amount of money available. The Auditor found that there was only \$69.42 available and so refused to pay the bill, but when the matter was brought to my attention I concluded that the law would permit the payment of that \$69.42 and that the balance would be paid later on under an appropriation of the Legislature. Accordingly, the \$69.42 was paid at that time. Later on, some other money became available and the balance was paid.  
It is said that British and Russian representatives have met in London to decide upon the division of Persia. The latter nation was not called into the conference.  
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